

(2010) 12 BOM CK 0023

In the Bombay High Court

Case No : Criminal Application No. 1477 of 2010 in Criminal Appeal No. 951 of 2009

Chandrapal Khubiram Rajoriya

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 323

Citation : (2010) 12 BOM CK 0023

Hon'ble Judges : A.P. Bhangale, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : Deepa Kamath, for the Appellant; D.P. Adsule, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

1. The Appellant-Applicant has been convicted by the Additional Sessions Judge, Greater Mumbai for offence punishable u/s 302 and is undergoing life sentence. During the pendency of the Appeal, present Application has been filed praying for releasing the Applicant on parole for a period of 30 days. In the alternative to grant him temporary bail in order to attend the marriage ceremony of his sons scheduled on 9th December, 2010. This Application was moved on 2nd December, 2010. It was taken up for hearing on 3rd December, 2010 when we thought it appropriate to direct the concerned Authority to decide the Applicant's request for grant of parole on or before 6th December, 2010. Pursuant to the said direction, the concerned Authority considered the parole request of the Applicant and has rejected the same principally on the ground that the Applicant is not eligible for grant of parole in terms of Rule - 19 of the statutory Rules.

2. In view of the said decision which was conveyed to us yesterday, we called upon the Learned APP to take instructions whether it will be possible for the police officials to escort the Applicant to enable him to attend the marriage of his two sons and can be brought back soon thereafter especially because the

Applicant is willing to bear the entire cost of transport and other allowances of the police officials. The Learned APP now informs us that there is one more case registered against the Applicant for offence punishable u/s 323 of IPC with Deonar police station. He, however, is not in a position to state about the status of the said FIR whether it has ended in conviction or acquittal of the Applicant.

3. It is not in dispute that Applicant is in custody since 2008. It is also not in dispute that in the past the Applicant has availed of furlough leave and has abided by the conditions imposed by the concerned Authority.

4. Insofar as the view taken by the appropriate Authority in rejecting the parole request of the Applicant as not being eligible in terms of Rule - 19, in our opinion, is ill advised. Rule - 19 plainly provides for grant of parole on the ground of serious illness or death of any member of prisoner's family "or for any other sufficient cause". In the first place, Rule 19 can be availed by the specified prisoner or convict. The fact that the Appeal preferred by the Applicant is still pending in this Court, would not militate against the Applicant. He would still be considered as a prisoner or convict for the purpose of Rule - 19. More so because the order of conviction against the Petitioner has not been suspended by this Court so far. Secondly, the expression any other sufficient cause is wide enough to grant parole to enable the prisoner to attend marriage of his kith and kin. That being the only reason recorded by the appropriate Authority and as it cannot be sustained in law, the order as passed by the appropriate Authority cannot stand the test of judicial scrutiny. Thus, the same deserves to be set aside. Instead, we are of the considered opinion that the Applicant deserves to be released on parole forthwith to enable him to attend the marriage of his two sons scheduled on 9th December, 2010 at Aligarh District (U.P.). We direct the Authorities to complete the formalities for release of the Applicant on parole for a period of eight days from the date of his release on or before 3.00 p.m., today.

5. The concerned Authorities would be free to impose suitable conditions which will have to be complied by the Applicant including to execute necessary bond and undertaking as may be required as per the Rules. As aforesaid, all these formalities will have to be completed before 3.00 p.m. today. The Jailor is present in Court and has taken notice of this order. Copy of the operative order be made over to the Applicant and also to the Learned APP forthwith. The operative order reads thus:

ORDER

1. Application is allowed.

2. We direct the concerned Authorities to ensure that the Applicant is released on parole by completing all the requisite formalities as required in terms of the statutory rules not later than 3.00 p.m. today so that he would be able to attend the marriage of his sons scheduled on 9th December, 2010 at Ghazipur, Dist. Aligarh.

3. All concerned to act on ordinary copy of this order, duly authenticated by the office.